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EXAMINER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MICHAEL MADSON

Appeal 2015-006727
Application 13/366,908
Technology Center 1700

Before ADRIENE LEPIANE HANLON, BRIAN D. RANGE, and
JENNIFER R. GUPTA, *Administrative Patent Judges*.

RANGE, *Administrative Patent Judge*.

DECISION ON APPEAL

SUMMARY

Appellant appeals¹ under 35 U.S.C. § 134(a) from the Examiner's decision rejecting claims 1–10. We have jurisdiction. 35 U.S.C. § 6(b).

We AFFIRM.

¹ According to the Appellant, the real party in interest is BioLogistics, LLC. Appeal Br. 1.

STATEMENT OF THE CASE

Appellant describes the invention as a method of isolating banana starch from green bananas. Appeal Br. 2. Claim 1, reproduced below with emphasis added to certain key recitations, is illustrative of the claimed subject matter:

1. A method of isolating banana starch from a green banana steps comprising:

blending a green banana with a treatment solution for a predetermined amount of time to create a mixture;

pouring the mixture through a sieve;

collecting a liquid suspension of the mixture;

centrifuging the liquid suspension only once to form white banana starch such that the liquid suspension does not completely dry to prevent the starch from browning after several months of storage.

Appeal Br.² A-1 (Claims App'x.).

REFERENCES

The Examiner relies upon the prior art below in rejecting the claims on appeal:

Sutton et al. (hereinafter "Sutton")	US 3,305,366	Feb. 21, 1967
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Whistler	US 5,797,985	Aug. 25, 1998
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Fichtali et al. (hereinafter "Fichtali")	US 5,855,688	Jan. 5, 1999
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University of Florida IFAS Extension, South Florida Tropics: Banana (July 2013) (hereinafter "IFAS").

² In this decision, we refer to the Final Office Action mailed November 5, 2014 ("Final Act."), the Appeal Brief filed February 5, 2015 ("Appeal Br."), the Examiner's Answer mailed May 7, 2015 ("Ans."), and the Reply Brief filed July 7, 2015 ("Reply Br.").

REJECTIONS

The Examiner withdraws the rejection based on Whistler in view of Sutton as presented in the November 5, 2014, Final Office Action.

The Examiner maintains the following rejections on appeal:

Rejection 1. Claims 1, 3–5 under 35 U.S.C. § 103 as unpatentable over Whistler in view of Sutton. Ans. 2 (new rejection).

Rejection 2. Claim 2 under 35 U.S.C. § 103 as unpatentable over Whistler in view of Sutton and further in view of Fichtali. *Id.* at 4 (new rejection).

Rejection 3. Claims 6–10 under 35 U.S.C. § 103 as unpatentable over Whistler in view of Sutton and further in view of IFAS and further in view of Fichtali. *Id.* at 5 (new rejection).

ANALYSIS

We review the appealed rejections for error based upon the issues identified by Appellant and in light of the arguments and evidence produced thereon. *Cf. Ex parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010) (precedential) (cited with approval in *In re Jung*, 637 F.3d 1356, 1365 (Fed. Cir. 2011) (“it has long been the Board’s practice to require an applicant to identify the alleged error in the examiner’s rejections”)). After having considered the evidence presented in this Appeal and each of Appellant’s contentions, we are not persuaded that Appellant identifies reversible error, and we affirm the Examiner’s § 103 rejections for the reasons expressed in the Final Office Action and the Answer. We add the following primarily for emphasis.

Appellant argues all rejections together and argues all claims as a group. *See* Appeal Br. 4–7; Reply Br. 2–3. Therefore, consistent with the

provisions of 37 C.F.R. § 41.37(c)(1)(iv) (2013), we limit our discussion to claim 1, and all other claims on appeal stand or fall together with claim 1.

The Examiner finds that Whistler teaches each recitation of claim 1's method of processing green bananas to produce banana starch except does not teach "centrifuging the liquid suspension only once to form white banana starch such that the liquid suspension does not completely dry to prevent browning." Ans. 2–3; Final Act. 3. Sutton teaches that darkening of fruits may be inhibited by including a treatment solution. Ans. 3; Final Act. 3–4. The Examiner thus concludes that it would have been obvious to one of ordinary skill in the art at the time of the invention to not complete dry the banana starch filtrate of Whistler to provide a cover solution as taught by Sutton to inhibit darkening and fermentation. *Id.* A preponderance of the evidence supports the Examiner's findings and conclusion. *See* Whistler 1:48–2:22; Sutton 1:8–46.

Appellant argues that Whistler does not teach centrifuging "only once" as recited in claim 1 and teaches away from centrifuging "only once" because Example 1 of Whistler teaches a two-step centrifuge process. Appeal Br. 4–7; Reply Br. 2–3. The Examiner, however, finds that Whistler at column 1, lines 59–63 "broadly teaches simple centrifugation or centrifuging once and is not limited to requiring two centrifuging steps as in the Example." Ans. 9. Based on consideration of Whistler as a whole, a preponderance of the evidence supports the Examiner's finding. A person of skill in the art, reading Whistler, would consider utilizing a single centrifuge step and would not understand Whistler as teaching the two centrifuging steps of Example 1 as being the only option. *See Pfizer, Inc. v. Apotex, Inc.*, 480 F.3d 1348, 1370 (Fed. Cir. 2007) ("all disclosures of the prior art, including unpreferred embodiments, must be considered") (internal quotes

and citation omitted). The Examiner's finding in this regard is further supported by Whistler stating that the filtrate "may be surface scrapped to remove residual protein and then dried" and thus indicating that the centrifuging step relating to the surface scrapping is optional. Ans. 2–3.

Moreover, even if Example 1 were the only method taught by Whistler, Whistler would still teach a process meeting claim 1's recitations. In particular, Whistler states that a "starch slurry" forms by the time the first centrifuging step is complete. Whistler 2:17–20. At this intermediate point in the Whistler / Sutton process, claim 1's "centrifuging the liquid suspension only once to form white banana starch" recitation would be met.

Appellant also argues that Sutton only adds its treatment solution after the product is fully prepared and that "one reading the disclosures of Whistler and Sutton would be taught to first isolate the banana starch using multiple instances of centrifuging and then adding a treatment solution, which is not what claims 1, 6, and 10 require." Appeal Br. 7. The evidence, however, supports the Examiner's finding that Whistler teaches adding a solution prior to centrifuging. Appeal Br. 9; *see also* Whistler 1:50–55 ("This is done by mechanically comminuting green bananas in the presence of . . . sodium bisulfite solution . . .").

Because Appellant does not identify reversible error, we sustain the Examiner's rejection of claims 1–10.

DECISION

For the above reasons, we affirm the Examiner's rejection of claims 1–10.

Appeal 2015-006727
Application 13/366,908

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED